



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

August 14, 1995

Ms. J. Sage White  
Assistant City Attorney  
City of Austin  
Department of Law  
Norwood Tower  
P.O. Box 1088  
Austin, Texas 78767-8828

OR95-758

Dear Ms. White:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 32489.

The City of Austin (the "city") has received a request for the personnel file and other files relating to an Austin Police Department officer. You assert that this information is confidential under section 552.101 of the Government Code in conjunction with other statutes and excepted from required public disclosure under section 552.103.

Section 552.103(a) excepts from required public disclosure information relating to litigation "to which the state or political subdivision . . . is or may be a party." Gov't Code § 552.103(a). Section 552.103 requires concrete evidence that litigation is realistically contemplated; it must be more than mere conjecture. Open Records Decision Nos. 518 (1989) at 5, 328 (1982). Thus, to secure the protection of this exception, a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990); *see also* Open Records Decision No. 588 (1991) (contested case under APTRA is litigation for purposes of former section 3(a)(3) exception).

You have provided the following information:

*State of Texas v. Mark Campos*, Cause No. 422,649, is pending in the County Courts at Law of Travis County, Texas. During a recent hearing on pretrial motions in this case, the requestor stated in open court that he wanted the personnel file of [the officer] in order to prepare for trial. . . .

The records relate to the personal and work history of the officer who is the primary state's witness against the requestor's client and who will testify against him.

In subsequent correspondence, you indicated that the trial in this matter is currently scheduled for the week of September 11, 1995. Based on the foregoing, we conclude that the city has demonstrated that the requested information relates to pending litigation. Therefore, the information may be withheld from required public disclosure under section 552.103.<sup>1</sup> Of course, the information may not be withheld under section 552.103 if the requestor has already had access to it or if the litigation is no longer pending.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Mary R. Crouter  
Assistant Attorney General  
Open Government Section

MRC/LRD/rho

Ref.: ID# 32489

Enclosures: Submitted documents

cc: Mr. Andrew J. Forsythe  
Williams & Forsythe  
1100 West Avenue  
Austin, Texas 78701  
(w/o enclosures)

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<sup>1</sup>Because we resolve your request under section 552.103, we do not reach your section 552.101 claims.